treated, there is no provision for compensating the doctor. Indeed, the distinct understanding is that no bill for professional services may be rendered, even though the services may have been of a life-saving nature, and notwithstanding that the patient has been found abundantly able to pay, so that no remuneration of any kind may be expected, sought, or accepted if offered. In other words, the medical man is entitled to no consideration: let the Hospital be paid—and to hell with the doctor!

It is a self-evident truth that there would be and could be no such thing as a hospital without the medical profession. Of course, an administration department is necessary; of course, a culinary department is necessary; of course, a nursing department is necessary; and equally, of course, a long and varied list of more humble employees are necessary for the efficient maintenance of miles of expensive corridors and acres of imposing space. And each one of these employees, in every department, expects and receives adequate compensation for his or her services—which is as it should be. It may be mentioned, in passing, that the average number of employees, exclusive of the attending staff, exceeds the average number of patients at all times!

But the medical man, the very heart of the institution, the basic factor which renders its existence possible, not only receives no monetary consideration, but is expected to serve skillfully and faithfully, bearing the major burden of safeguarding human lives, without regard to the justice involved.

We all know that the conditions under which the Hospital operates today are vastly different from those of twenty years ago. Complexities resulting from enormous increase in population and tremendous changes in the hazards of modern life, have brought many new problems to be dealt with. Among these may be cited the great increase in the number of motor vehicles and the resultant multiplied traffic casualties.

As an illustration: a messenger from some outlying apartment house rushes into the corner drug store at midnight in quest of relief for Tom, Dick, or Harry, who is suffering with intense abdominal pain or has been seriously injured in an automobile accident. He is advised to send the patient, not to *a* hospital, but to the General Hospital. When the patient arrives, it is soon evident that immediate surgery is imperative. There is no time to discuss matters of finance: a life is in danger. The operation is performed, the life saved. Afterward, it is ascertained that the patient is a visitor in the city and that he has unlimited means. Does the surgeon receive compensation for his life-saving work at midnight? *He does not, but the hospital is always paid!*

Or an automobile accident on a county highway results in abdominal trauma, with a ruptured viscus and concealed hemorrhage. The patient is probably unconscious. Immediate surgery is necessary—no time to investigate the matter of ability to pay. Later it comes to light that the patient is a wealthy man or woman, or collects substantial liability insurance. Who gets paid? The Hospital *always*—the surgeon *never!*

Again: scarcely a week passes in which the newspapers fail to record that some patient of a prominent family, or of known prosperous business connections, is confined in the General Hospital or has died there. In all such instances the medical man, as usual, is left with the bag to hold. It can hardly be expected to promote his happiness and peace of mind to observe that the patient is provided with one or more special nurses, for whom the requisite funds apparently can always be found.

Boiled down to a few words the point of the foregoing is this: As a matter of ordinary right thinking, *the surgeon who does the life-saving work is entitled to, and should receive compensation in every case in which the Hospital collects payment.* This should be the law on the subject, and should represent the attitude of the governing authorities. The profession does not seek or desire remuneration for services rendered to the *truly indigent.*

The layman whose attention is directed to the facts above set forth, without exception finds himself unable to credit them. "True," says he, "physicians have long been looked upon as 'easy marks,' but surely they are not such *chumps* as that!"

Between regimentation on the one hand and open exploitation on the other, the practice of medicine bids fair soon to become the least inviting of all vocations. Will it be forced to abandon its cherished ideals and traditions? Yes, unless, in self-defense, it arouses to oppose abuses wherever and whenever they are encountered.

What is a *charity* hospital?

2007 Wilshire Boulevard.

MALPRACTICE INSURANCE*

To the Board of Directors of the San Francisco County Medical Society:

Your special committee on malpractice insurance submits this its formal report of the extensive investigation it has conducted with respect to the various physicians' defense and indemnity insurance contracts now available to the members of the San Francisco County Medical Society.

Upon undertaking its work, the committee found that the following insurance companies, authorized to transact the business of liability insurance in the State of California, were issuing physicians' defense and indemnity insurance contracts: The Medical Protective Company of Fort Wayne, Indiana; The United States Fidelity and Guaranty Company; and Zurich General Accident and Liability Insurance Company, Ltd.

The committee also found that a number of surplus line brokers were engaged in writing physicians' defense and indemnity insurance contracts on behalf of different groups of underwriters at Lloyd's in London, England. The committee has been informed by the Society's attorney that surplus line brokers are authorized by the California Insurance Code to issue contracts of insurance in any particular field after it has been determined by the Insurance Commissioner that less than 50 per cent of the authorized and admitted insurers doing the particular class of insurance business involved (in this case liability insurance) are refusing to issue insurance contracts of the type sought to be issued by the surplus line brokers.

With respect to those insurance companies authorized to transact a liability insurance business in the State of California, the committee found the following: The Medical Protective Company of Fort Wayne, Indiana, issues physicians' defense and indemnity policies to members of the California Medical Association only, at the rate of $32 per annum and with a coverage of $5,000 to $15,000, but excludes the following: (*a*) most surgery unless done in an emergency; (*b*) any liability growing out of the ownership, operation, and supervision of any x-ray equipment for therapeutic work; or (*c*) any liability arising out of the ownership, operation, and supervision of any hospital, sanitarium, or clinic, or any business enterprise. Upon payment of a premium of $48 per annum the company will remove the surgery restriction. In other words, a surgeon must pay $48 per year for coverage of $5,000 to $15,000. It appears that the Medical Protective Company will insure against liability arising from the use of x-ray equipment for therapeutic work at a premium of not less than $150 for the minimum coverage.

The United States Fidelity and Guaranty Company issues a physicians' defense and indemnity insurance contract to members of the California Medical Association only with a rider which excepts x-ray treatment and hospital ownership or employment, but does not restrict coverage as to surgery. The committee has been informed from time to time by individuals, physicians, and others, that the rates of the United States Fidelity and Guaranty Company have increased considerably in the past year. The committee understands that the present rates vary from a minimum of $40 per year for $5,000 to $15,000 coverage for general practitioners to a maximum of $92 per year for $50,000 to $150,000 for surgeons and $147.20 per year for a like coverage for x-ray specialists.

The Zurich General Accident and Liability Insurance Company, Ltd., according to the committee's information, will issue physicians' indemnity policies in certain instances, but the committee is also informed that the Zurich will not issue a policy to a physician who is not a member of his county society and the state association, and even

* This is a copy of the report submitted to the San Francisco County Medical Society by its Special Committee on Malpractice. See also February issue, on page 148, for report of the Los Angeles County Medical Association Committee.

though a physician is a member of his state and county societies the company exercises a rigid selection; in other words, the committee is informed that the Zurich is not at all anxious to enter the malpractice field on a large scale. The committee has not had an opportunity (through no fault of the Zurich) to examine its policy forms.

There may be other insurance companies authorized to do business in California which will write malpractice policies, but an exhaustive inquiry by your committee has failed to disclose them. However, there are so many insurance companies operating in this State that it was impossible for the committee to address an inquiry to each.

On the whole, the insurance companies which have just been discussed, their policies and their premium rates, are well known to the medical profession and, consequently, need not be further discussed herein. On the other hand, the large number of surplus line brokers representing various groups of underwriters located at Lloyd's in London, England, who are engaging in the malpractice insurance business in this State, are not so well known to the medical profession nor are their policies or, in fact, the very nature of Lloyd's insurance.

Before discussing malpractice policies issued in the name of Lloyd's of London, it may be advisable to relate briefly the nature and functioning of Lloyd's of London. Lloyd's is divided into many groups of underwriters, each operating independently of the other. In California these groups are represented by approximately thirty-seven agencies known as "surplus line brokers." Insurance agents in the various towns and cities of the State place the insurance of their clients (*i. e.*, physicians) with the surplus line broker. In insurance terminology the insurance agent is known as the "producer," and the surplus line broker is often referred to as the "broker," "underwriter," or "agent." (Mr. Peart advises that this language utterly disregards the legal distinction between an "agent" and a "broker.")

The various Lloyd's groups (often referred to as "underwriters"), each acting for itself, prepare so-called underwriting contracts by the terms of which the particular group authorizes specified agents (surplus line brokers) in various parts of the world to issue contracts of insurance to individuals in the name of "Lloyd's of London." Each member of the underwriting group signs his name to this underlying contract and indicates after his name the proportion of the total liability which may be incurred on all of the insurance contracts ultimately issued which he agrees to be personally responsible for. Copies of this underlying contract are then made available to the agents of the particular underwriting group all over the world. Acting pursuant to the authority contained in an underlying contract, surplus line brokers in California issue and sign malpractice insurance contracts bearing the name "Lloyd's of London."

At this point your committee desires to quote from a letter received by the committee from an insurance agent in San Francisco:

"To begin with, Lloyd's have had little experience with malpractice insurance. If the London market should be opened up generally, it will not be done as a gesture to the professional man. From our own experience we can definitely state that it has been and will be used as an accommodation to the insurance agent to further his volume of business with the surplus line broker, who also represents other carriers writing all forms of insurance. Typical of this point is the letter at hand from one of these agencies and with respect to malpractice insurance, which states in part: "Following the existing custom, we shall require the placing with our office of correlated lines of insurance such as fire, casualty, etc.' Inevitably the insurance producer, valuable in other lines of insurance and using his volume of other business as an inducement, will place malpractice insurance for his doctor client, regardless of affiliation (as in the past, we can conclude that little thought will be given to membership in medical societies or associations), claims frequency or reputation. In this manner many undesirable risks will be obtained, thereby adversely affecting the experience of the business in general. Likewise, rate competition will enter into the picture. At the present time there is one representative of Lloyd's advertising a malpractice policy for $16 for three years, needless to say a totally unsatisfactory contract. Further than this it is obvious that, should a number of groups write this policy, none of them would have a large premium income. With an annual premium of approximately $30 in the average instance and an isolated loss of $10,000, the carrier would suffer an irreparable loss and would immediately refuse to handle further business. The repercussion of this experience would resound throughout the entire group. With a volume of preferred business concentrated in one group, the same loss could be absorbed. Another complication would be the danger of various groups changing their policy from time to time. In our own case neither the policy form nor rates would ever be changed without notification to attorneys and medical societies. This could not be done with all producers and surplus line brokers, and the result would be an impossible situation wherein attorneys would be called upon to review as many as six thousand policies annually."

From the foregoing it is apparent that the question of placing malpractice insurance with surplus line brokers representing underwriting groups at Lloyd's in London, England, is a serious and immensely complicated problem. In addition to the problems created by the very nature of Lloyd's, there are the legal problems which exist as a consequence of Lloyd's being situated several thousand miles away from the State of California. During its investigation your committee sought the opinion of Mr. Hartley F. Peart, the Society's attorney, and a portion of his exhaustive reply is quoted herein for the careful consideration of all members of the Society.

"Actions to Enforce the Assured's Rights.—The most important legal problem with respect to Lloyd's of London malpractice policies, arises from the fact that the Lloyd's underwriters are in England, not in California. If for any reason a physician holding a Lloyd's policy found it necessary to take action against the insurer, such physician would be required to bring suit or present his claim in England. This problem is of extreme importance because insurance protection is no protection at all if the various insured persons are unable to hold the insurer to the terms of its contract except by proceeding in a jurisdiction five or six thousand miles away. Of course, we realize that Lloyd's of London has never failed to meet its obligations—but no one can foretell the future—and even though Lloyd's should not actually refuse to pay claims or judgments, there is always the distinct possibility of a difference of opinion in a particular case with respect to whether or not the terms of the policy cover the injury. Disputes relating to coverage often occur and are inherent in the nature of insurance contracts.

"The draftsman of the policy which has been submitted to us has recognized this point and has made a praiseworthy effort to overcome the disadvantage of tremendous distances. Paragraph 10 reads as follows:

" 'It is agreed that in the event of dispute as to the validity of any claim made by the assured under this policy of insurance, underwriters hereon, at the request of the assured, will submit to the jurisdiction of the courts of the state in which the principal office of the assured is located; and will comply with all legal requirements necessary to give such courts jurisdiction; and that in any suit instituted by the assured against any one of them upon this contract, underwriters herein will abide by the final decision of the courts of such state and settle accordingly.'

"The purpose of the above paragraph is to provide specifically that the underwriters of Lloyd's may in all cases be sued in California, thus obviating, to some extent at least, the difficulty. Paragraph 10 will overcome the problem under discussion *if* it is enforceable. In order to determine whether or not it is enforceable, we have devoted considerable time to an examination of the English law. It is necessary to determine the English law upon this point, because in the last analysis, even though the underwriters are sued in California, in order to collect any judgment in England (assuming, of course, that the underwriters have no property upon which execution can be levied in California).

"The English law appears to be fairly well settled to the effect that a party to a contract may consent in advance to the jurisdiction of a particular court, even though that party is not actually within the territorial limits of the court's process. See *Earl of Halsbury, Laws of England,* Vol. VI, pp. 284-286; *Vallee* vs. *Dumergue* (1849) 4 Exch. 290; *Rousillon* vs. *Rousillon,* 14 Ch. Div. 351; *Copin* vs. *Adamson,* L. R. 9 Exch. 345, 31 Law Times 242; and *Gilbert* vs. *Burnstine,* 73 A. L. R. at 1458.

"In the *Copin* case it was held that an English shareholder in a French company was bound by a clause in the articles of association of the Company by which all disputes between English shareholders were required to be submitted to the French courts and by which every shareholder was required to effect a domicile for the purpose of service of process in France and in default of such acquisition of domicile service was authorized to be made at a certain public office in Paris.

"The above cases go to the question of the validity of a contractual provision such as paragraph 10. In addition, there is a second question, viz.: If a judgment is obtained in California, will the English courts enforce it without reexamining the merits of the case? Early English decisions generally held that while a foreign judgment in a personal

suit was sufficient to give a ground of action and amounted to *prima facie* evidence of debt, yet it was not conclusive and the case might be reëxamined on the merits. It is now settled that a foreign judgment, when rendered by a court having jurisdiction and without fraud and while still remaining in force abroad, is binding and conclusive in the English courts in all cases and not open to impeachment or reëxamination on the merits. See 26 *Harvard Law Review* 298-301; *Harvey* vs. *Farnie*, 8 App. Cas. 43, 5 Eng. Rul. Cases 703; *Castrique* vs. *Imrie*, L. R. 4 H. L. 414, 5 Eng. Rul. Cases 899; and 34 *Corpus Juris* 1167.

"From English decisions we may conclude, first, that a party may by contract consent to the jurisdiction of a foreign court; and, second, that a judgment obtained in a foreign country pursuant to such a consent will be enforced in England. However, there is one point with respect to the English law which must be considered. The cases upholding consent by contract are cases in which some means of serving process was specifically provided in the contract. Paragraph 10 in the policy under consideration does not provide any such means; therefore, it is our opinion that it should be revised to include an agent in California for the purpose of accepting process."

In addition to the problems discussed by Mr. Peart, the committee was advised of the fact that there are at least a dozen and probably many more different types of Lloyd's contracts issued in this State by different surplus line brokers, each representing a particular underwriting group in London. Some of the Lloyd's policies brought to the attention of the committee were wholly inadequate, others afforded a fair degree of coverage, and a few compared favorably with policies issued by domestic insurers. But all of these policies presented the problem of enforcement in England and the additional problem of financial reserves in California.

Finally, one broker, the Lloyd M. Kahn Company of San Francisco, submitted a policy form to the committee for its approval or disapproval. This form was submitted to Mr. Peart with the request that he review it and suggest any changes that, in his opinion, would benefit the medical profession. Mr. Peart reviewed the policy and submitted a written opinion in which several changes were strongly recommended, including a paragraph by which the surplus line broker acting for the underwriting group at Lloyd's would consent to the jurisdiction of the California courts and a paragraph by which the underwriters would appoint an agent in San Francisco to act for them in all matters arising under the policy. All of these recommendations were immediately accepted by the Lloyd M. Kahn Company, and your committee was subsequently informed by Mr. Lloyd M. Kahn that the underwriting group at Lloyd's in London, upon whose behalf he was acting through a surplus line broker in San Francisco, had likewise accepted all of the recommendations. Thereupon your committee expressed its approval of this particular policy and caused such approval to be published in the Bulletin of the Society.

Only one other surplus line broker or agent representing underwriters at Lloyd's has submitted to your committee any form for approval or disapproval, and, unfortunately, that policy (submitted by O'Brien and Blackman Company) has not as yet been received from the Society's attorney, to whom it was recently referred by the Board of Directors.

Therefore, and taking into account the admittedly chaotic condition which exists with respect to Lloyd's of London malpractice insurance, your committee expressly recommends that the San Francisco County Medical Society express for the time being its lack of approval of all malpractice insurance policies issued in the name of Lloyd's of London, except the particular policy form issued by the Lloyd M. Kahn Company and previously approved, as stated above.

Before concluding, your committee once again desires to recommend to the members of the San Francisco County Medical Society that each and every member obtain membership in the Medical Society of the State of California. Membership in the Medical Society is obtainable upon application by any physician who is a member of the California Medical Association and who carries at least $5,000 of malpractice insurance. Membership cost is nominal, and it means that competent expert legal assistance can be obtained by the member to guard his personal interests and to aid his insurer's attorney if he is sued or threatened with suit. Your committee specifically recommends that every member of the County Society communicate with Dr. F. C. Warnshuis, Secretary of the Medical Society of the State of California, for further details.

The committee approves the three old line companies—Fort Wayne, United States Fidelity and Guaranty, and the Zurich—and of the Lloyd's policies studied by the committee, the committee believes the policy issued by the Lloyd M. Kahn Company to be the best available at the present time.

Respectfully submitted,

P. K. GILMAN, *Chairman.*

January 10, 1938.

THE PHYSICIAN'S INCOME TAX—1938*

This discussion relates only to the requirements of the Federal income tax law. Information with respect to the requirements of state income tax laws should be obtained from responsible state sources.

The Revenue Act of 1936 amended in numerous respects the prior income tax law, but none of the changes made relate to physicians as a class distinct from the main body of federal income taxpayers.

Every one who is required to make a Federal income tax return must do so on or before March 15, unless an extension of time for filing his return has been granted. For cause shown, the collector of internal revenue for the district in which the taxpayer files his return may grant such an extension, on application filed with him by the taxpayer. This application must state fully the causes for the delay. Failure to make a return may subject the taxpayer to a penalty of 25 per cent of the amount of the tax due.

The normal rate of tax on residents of the United States and on all citizens of the United States regardless of their places of residence is 4 per cent on net income in excess of the exemptions and credits.

WHO MUST FILE RETURNS

1. If gross income was less than $5,000 during 1937, a return must be filed (*a*) by every unmarried person, and by every married person not living with her husband or his wife, whose net income was $1,000 or more, and (*b*) by every married person living with her husband or his wife, whose net income was $2,500 or more. If the aggregate net income of husband and wife, living together, was $2,500 or more, each may make a return or the two may unite in a joint return.

2. Returns must be filed by every person whose gross income in 1937 was $5,000 or more, regardless of the amount of his net income and of his marital status. If the aggregate gross income of husband and wife, living together, was $5,000 or more, they must file either a joint return or separate returns, regardless of the amounts of their joint or individual net incomes.

If the status of a taxpayer, so far as it affects the personal exemption or credit for dependents, changed during the year, the personal exemption and credit must be apportioned, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month should be disregarded unless it amounts to more than half a month, in which case it is to be considered as a month.

As a matter of courtesy only, blanks for returns are sent to taxpayers by the collectors of internal revenue, without request. Failure to receive a blank does not excuse any one from making a return; the taxpayer should obtain the necessary blank from the local collector of internal revenue.

The following discussion covers only matters relating specifically to physicians. Full information concerning questions of general interest may be obtained from the official return blank and from the collectors of internal revenue.

GROSS AND NET INCOMES: WHAT THEY ARE

Gross Income.—A physician's gross income is the total amount of money received by him during the year for pro-

* Prepared by the American Medical Association Bureau of Legal Medicine and Legislation. From the *Journal of the American Medical Association,* January 20, 1938.